

CLAIM OF TOSHICHI NAKAMURA

[No. 146-35-116. Decided November 10, 1950]

FINDINGS OF FACT

This claim, alleging a loss in the sum of \$1,440.50, was received by the Attorney General on December 17, 1948. It concerns a loss occasioned by the sale of a hotel lease, including the furniture and furnishings thereof. Also included in the claim is a loss caused by the disappearance of certain articles of personal property from the place where they were stored by the claimant in the aforementioned hotel. Claimant and his wife were born in Japan of Japanese parents and were actually residing at 442 South Spring Street, Los Angeles, California, on December 7, 1941. Since the aforementioned date neither the claimant nor his wife has gone to Japan. All of the property herein concerned is community property. In accordance with military orders issued under authority of Executive Order No. 9066, dated February 19, 1942, the claimant and his wife were evacuated on May 9, 1942. They were sent to the Santa Anita Assembly Center at Arcadia, California, and from there to the Heart Mountain Relocation Center at Heart Mountain, Wyoming. At the time the claimant was evacuated, he was not permitted to take the above-mentioned property with him to the assembly center. Some time prior to his evacuation, on June 28, 1941, the claimant purchased the leasehold, furniture and furnishings of the "Golden Eagle Hotel" which consisted of 20 rooms and occupied the 2d and 3d floors of the premises at 442 South Spring Street, Los Angeles, California. By virtue of an extension granted by the owner of the premises, the expiration date of the lease had been extended to September 14, 1945. The purchase

price of the hotel and its accouterments was \$1,000; \$500 down and \$50 per month thereafter, payments of the note to be secured by a chattel mortgage on the furnishings of the hotel. Up until March 1942 the claimant had paid an additional \$400 making a total of \$900 paid on the agreed purchase price. In addition the claimant spent \$300 for renovations and an additional \$200 for supplies consisting of towels, sheets, pillowcases, bedspreads, etc. Due to his impending evacuation the claimant sold the hotel lease including the furniture and furnishings of the hotel back to the person from whom he had purchased same for the sum of \$125. Inasmuch as there did not then exist a free market upon which claimant could have disposed of his hotel for a price commensurate with its true value, claimant acted reasonably in disposing of same for as much as he could realize at the time. On his return from the relocation center, claimant returned to reclaim the property he had stored but found that said property was not there. At the time of the evacuation, the leasehold, furniture and fixtures of the hotel, including the improvements thereto, had a fair market value of \$1,260. In addition, the fair value of the personal property, excluding a Kodak camera, which disappeared from the place of storage was \$165. None of the losses herein described have been compensated for by insurance or otherwise.

REASONS FOR DECISION

The evidence of claimant's loss consists of his sworn statements, plus documentary material which proves the facts stated in the claimant's affidavit relative to his hotel business. Claimant is the proper person to file this claim for community property. See *Deering's Civil Code of California* (1949), § 172; *Henry S. Uyeda, ante*, p. 9. Losses of the type herein described have previously been held allowable under the Act. *Toshi Shimomaye, ante*, p. 1; *Akiko Yagi, ante*, p. 11.

The only question presented is whether a loss occasioned by the sale of a leasehold interest, in the circumstances here present, constitutes a "loss of real or personal property" within the meaning of the enacting clause of the Act. It is almost axiomatic that a leasehold interest is considered to be personal property. *Lycoming Fire Insurance Company v. Haven*, 95 U. S. 242, 250 (1877); *Primos Chemical Company v. Fulton Steel Corporation*, 254 Fed. 428; *Matter of Altahause*, 158 N. Y. 670. There can be little doubt that Congress contemplated a loss such as is herein described, i. e., a loss incurred as a result of a sale of a leasehold interest, when resort is had to the legislative history of the Act. The House committee in its report on the bill (80th Cong., 1st sess., H. R. 732) includes a letter from J. A. Krug, Secretary of the Interior, dated March 17, 1947, in which the following statement is made: "A large number had to accept totally inadequate arrangements for protection and management of property. Valuable leasehold interests had to be abandoned." It can thus readily be inferred from the above that a loss incurred as a result of the sale of a leasehold interest is a type of loss which the Congress intended to be reimbursable under the Act. "It would be a strict and unrealistic construction of the Act to hold that the phrase 'loss of real or personal property' comprehends only losses of tangible property or incorporeal property rights." *Toshi Shimomaye, supra*.

Among the articles of personal property lost for which reimbursement is claimed was a Kodak camera. Pursuant to Section 10 of the "Regulations of the Attorney General Controlling Travel and other Conduct of Aliens of Enemy Nationalities," dated February 5, 1942, aliens of enemy nationalities were forbidden to have cameras in their possession and were required to deposit same with the local police authorities. Had the claimant herein deposited his camera with the local police station as required by aforementioned Regulations, it would not have been in his possession and would have been in the safe

custody of the police authorities. Inasmuch as he failed to comply with the Regulations, he cannot be said to have acted reasonably in maintaining possession of the camera and his claim for loss thereof must, therefore, be disallowed.

The total value of the property for which claim is herein made has been determined to be \$1,425. From the sale of the hotel, claimant realized the sum of \$125, leaving an uncompensated balance of \$1,300.